
United States
Circuit Court of Appeals
For the Ninth Circuit.

SOUTHERN CALIFORNIA UTILITIES INC., a
corporation,

Appellant,

vs.

CITY OF HUNTINGTON PARK, a municipal corpora-
tion; THE CITY COUNCIL OF THE CITY OF
HUNTINGTON PARK; J. V. SCOFIELD, as
Mayor of said City of Huntington Park; J. V. SCO-
FIELD, OTTO R. BENEDICT, ELMER E. COX,
JOHN A. MOSHER AND JOHN C. FLICK, as
members of said City Council of Huntington Park;
and C. H. MERRILL,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division

FILED

FEB 18 1925

PAUL S. CHASE,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

PAUL OVERTON, Esq.,
EDWARD W. BREWER, JR., Esq.,
810 South Flower Street, Los Angeles, California.

For Appellees:

CARSON B. HUBBARD, Esq.,
THOMAS A. BERKEBILE, Esq.,
Hollingsworth Building, Los Angeles, California.
GEORGE W. CROUCH, Esq.,
Rives-Strong Building, Los Angeles, California.

UNITED STATES OF AMERICA, ss.

To City of Huntington Park, a municipal corporation; the City Council of the City of Huntington Park; J. V. Scofield, as Mayor of said City of Huntington Park; J. V. Scofield, Otto R. Benedict, Elmer E. Cox, John A. Mosher, and John C. Flick, as members of said City Council; and to Carson A. Hubbard and Thomas A. Berkebile, their attorneys; and to C. H. Merrill, and to George W. Crouch, his attorney,

Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 11th day of February, A. D. 1929, pursuant to order allowing appeal, filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain suit in equity wherein Southern California Utilities Inc., a corporation, is complainant, and City of Huntington Park, a municipal corporation; the City Council of the City of Huntington Park; J. V. Scofield, as Mayor of said City of Huntington Park; J. V. Scofield, Otto R. Benedict, Elmer E. Cox, John A. Mosher and John C. Flick, as members of said City Council; and Carson A. Hubbard and C. H. Merrill, are defendants and you are required to show cause, if any there be, why the order and decree appealed from in the said suit mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable PAUL J. McCORMICK
United States District Judge for the Southern District of California, this 14th day of January, A. D. 1929, and of the Independence of the United States, the one hundred and forty *fourth*.

Paul J. McCormick,
U. S. District Judge for the Southern
District of California.

Huntington Park, a municipal corporation; The City Council of the City of Huntington Park; J. V. Scofield, as Mayor of said City of Huntington Park; J. V. Scofield, Otto R. Benedict, Elmer E. Cox, John A. Mosher and John C. Flick, as members of said City Council of Huntington Park; and C. H. Merrill, and alleges:

I.

That complainant is a public corporation organized under the laws of the State of California, with its principal place of business at the City of Los Angeles, in said State, and that complainant is a citizen of the State of California and has its residence only in said state.

II.

That in the month of August, 1906, defendant City of Huntington Park was incorporated as a municipal corporation under the laws of the State of California, and ever since has been and now is a municipal corporation of the State of California and situate in the County of Los Angeles; and that the defendant City Council of the City of Huntington Park is the legislative body of said defendant City of Huntington Park.

III.

That defendant J. V. Scofield is now, and for several months last past has been, the duly elected, qualified and acting Mayor of said defendant City of Huntington Park. That each of the defendants J. V. Scofield, Otto R. Benedict, Elmer E. Cox, John A. Mosher, and John C. Flick is a citizen and resident of the State of California, and each of said defendants is a duly elected, qualified and acting member of said defendants The City Council of the City of Huntington Park, and that said defendants constitute said City Council of said City of

Huntington Park. That defendant C. H. Merrill is a citizen and resident of the State of California.

IV.

That the cause of action declared on herein arises under the Constitution of the United States, and that the amount in controversy in this suit exceeds the sum of Three Thousand Dollars (\$3,000), exclusive of interest and costs, as hereinafter set out.

V.

That on or about the 13th day of April, 1903, the Board of Supervisors of the County of Los Angeles, State of California, duly adopted an ordinance designated as Ordinance No. 72 (New Series), and entitled "An ordinance granting to E. V. Baker, and assigns, the right to lay down and maintain pipes and pipe lines through, in and under the streets, alleys and public highways in and on the territory hereinafter described, in the County of Los Angeles, State of California, for the purpose of conducting and distributing water and selling the same for domestic purposes and irrigation," a copy of which said ordinance, marked "Exhibit A", is attached hereto and made a part of this bill of complaint. That thereafter, to-wit, on or about the 1st day of October, 1914, said E. V. Baker duly assigned, transferred and conveyed the franchise, rights and privileges granted by said ordinance, to South Los Angeles Water Company, a corporation then organized and existing under the laws of the State of California. That thereafter, to wit on or about the 7th day of June, 1926, said South Los Angeles Water Company duly assigned, transferred and conveyed to complainant said franchise, rights and privileges, and ever since said last mentioned date complainant has

been and now is the owner and possessor of all the rights and privileges granted by said County of Los Angeles under said ordinance marked "Exhibit A".

VI.

That said South Los Angeles Water Company was organized as a corporation on or about April 27, 1903, for the purpose of supplying and furnishing water to the County of Los Angeles and to the inhabitants thereof for domestic and irrigation purposes. That in the year 1903 said South Los Angeles Water Company commenced the laying of pipes, pipe lines and water conduits and service connections therefrom and therewith, through, in and under the public streets, alleys and highways of that portion of said County of Los Angeles described and set out in said ordinance marked "Exhibit A", and that thereafter said Company extended its said pipes, pipe lines and water conduits through, in and under such public streets, alleys and highways whenever and wherever required for the purpose of supplying to the inhabitants thereof water for domestic and irrigation purposes. That from and after the laying of pipes, pipe lines and water conduits in said territory, as aforesaid, said South Los Angeles Water Company furnished and supplied water for domestic and irrigation purposes to such of the inhabitants in said territory as desired the same, and continued such service until some time in the year 1914, at which time all of its property, franchises, rights and privileges were sold, transferred and conveyed to said South Los Angeles Land and Water Company. That from and after said sale and transfer said South Los Angeles Land and Water Company furnished and supplied to the inhabitants of said territory water for domestic and irri-

gation purposes and continued to so supply water for such purposes until on or about the 21st day of May, 1926. That upon said last mentioned date, all of the property, rights, franchises and privileges of said South Los Angeles Land and Water Company were sold, transferred and conveyed to complainant. That ever since such sale and transfer to it of said property, complainant has furnished and supplied, and is now furnishing and supplying, water to the inhabitants of said territory through and by means of said pipes, pipe lines and water conduits laid under and pursuant to said ordinance marked "Exhibit A".

VII.

That on or about the 30th day of April, 1920, said defendant City of Huntington Park purchased from said South Los Angeles Land and Water Company certain pipes, pipe lines and water conduits and connection therewith then located in said City and owned and used by said South Los Angeles Land and Water Company for the purpose of supplying water for domestic and irrigation purposes to the inhabitants of said City, and that from and after said purchase said City furnished and supplied, and now is furnishing and supplying, water to the inhabitants of said City in that portion of said City as it existed prior to the 5th day of October, 1925. That on or about said 5th day of October, 1925, certain unincorporated territory in said County of Los Angeles north of said City of Huntington Park was, by appropriate proceedings, annexed to said City and ever since said date has been and now is a part of said City; that said territory so annexed as aforesaid is commonly known and designated as the Fruitland District and is more particularly bounded and described as follows, to-wit:

“All that portion of Huntington Park Extension No. 1 lying easterly of Malabar Street, as said tract and street are delineated and designated on map recorded in Map Book 8, Page 181, Records of Los Angeles County, California,”

which said territory is hereinafter referred to as the Fruitland District. That prior to the year 1906 said South Los Angeles Water Company installed pipes, pipe lines and water conduits and furnished and supplied water for domestic and other purposes in said Fruitland District, and that ever since the installation thereof said Company and its successors in interest, as aforesaid, have furnished and supplied, and complainant is now furnishing and supplying, water to the inhabitants of said district for said purposes, and that during no time has water been furnished to said inhabitants for such purposes by defendant City of Huntington Park.

VIII.

That on June 4, 1928, the said City Council of the City of Huntington Park duly adopted a certain resolution designated as “Resolution of Intention No. 1093”, a copy of which said resolution, marked “Exhibit B”, is attached hereto and made a part hereof. That in and by said resolution it is declared to be the intention of said defendant City to lay a system of pipes and pipe lines in and along the streets and other public places in said Fruitland District, and to furnish and supply water to the inhabitants thereof now being so supplied by complainant.

IX.

That thereafter, to wit, on the 2nd day of July, 1928, the said City Council of said defendant City of Hunting-

ton Park adopted a certain resolution designated as "Resolution of Intention No. 1099," a copy of which said resolution, marked "Exhibit C", is attached hereto and made a part hereof. That in and by said resolution said defendant City of Huntington Park ordered the laying of pipes and pipe lines in said Fruitland District for the purpose of supplying water to the inhabitants thereof. That thereafter, to wit, on the 16th day of July, 1928, said defendant The City Council of said City of Huntington Park adopted a resolution designated as "Resolution of Award No. 1109" awarding to defendant C. H. Merrill the contract for laying and installing cast iron water mains in the streets, avenues and other public places in said Fruitland District, a copy of which said Resolution of Award is attached hereto, marked "Exhibit D" and made a part hereof.

X.

That prior to the adoption of said resolution of intention marked "Exhibit B" complainant transmitted to said defendant City of Huntington Park an offer in writing to sell all of complainant's pipes, pipe lines, service pipes, water meters and connections in said Fruitland District, but that said defendant City failed and refused to accept said offer, and failed and refused to enter into any negotiations for the purchase of complainant's said property, and failed and refused to purchase the same, or any part thereof.

XI.

That the value of complainant's pipes, pipe lines, water conduits, services and meters and connections therewith, and of complainant's business of furnishing and supplying water, all within said Fruitland District, is in excess of

Twenty Thousand Dollars (\$20,000). That said defendant City of Huntington Park threatens and intends to immediately lay pipes, pipe lines and services and connections therewith in the public streets and highways in said territory, under and pursuant to said Resolutions of Intention and Award, and threatens and intends, as soon as said pipes and pipe lines are laid, to furnish and supply water through and by means thereof to the inhabitants of said territory, and threatens and intends to cause said inhabitants to cease taking water from complainant and to take water for all of their requirements only from said defendant City of Huntington Park. That, if said defendant City of Huntington Park is permitted to lay said pipes and pipe lines and to furnish water through and by means thereof to said inhabitants, complainant's said business of furnishing and supplying water to said inhabitants will be and become destroyed, and complainant's said property in said territory will be and become of no value, and that such act or acts on the part of said defendant City of Huntington Park will result in the confiscation of complainant's said property now devoted to public use as aforesaid, and will deprive complainant of its said property without just compensation and without due process of law, and will deny to complainant the equal protection of the laws, in contravention of the Fourteenth Amendment to the Constitution of the United States.

XII.

That the adoption by said defendant The City Council of said City of Huntington Park of said Resolution of Intention and said Award of Contract to said defendant C. H. Merrill, and that the laying of said pipes and pipe

lines by said defendant City of Huntington Park under and pursuant to said resolutions and said award, constitute and are an impairment of the obligation of the contract between said County of Los Angeles and complainant and set out in said ordinance marked "Exhibit A", in contravention of Section 10 of Article 1 of the Constitution of the United States.

Forasmuch, therefore, as complainant is without full and adequate remedy, save in a court of equity, it prays that a writ of subpoena issue out of this court directed to the defendants, and each of them, requiring them and each of them, on a day certain therein to be named, to appear before this Honorable Court and to answer all and singular the matters herein averred, but not under oath, an answer under oath being hereby expressly waived; that each of said defendants be required to stand by and abide such orders and decrees of this Honorable Court as may from time to time be made herein; that on final hearing of this cause a perpetual injunction shall issue out of this court restraining the defendants and each of them in his official capacity, and restraining said defendant City of Huntington Park, its officers, agents, servants and employees, from laying any pipes, pipe lines or conduits for furnishing and supplying water to the inhabitants of said Fruitland District, and from furnishing and supplying any water to the inhabitants thereof for domestic or other uses.

And your orator reserves the right, if it shall be so advised, pending this suit, to apply for a temporary restraining order or a temporary injunction restraining defendants as above prayed.

And your orator prays for all further relief to which in equity it may be entitled.

SOUTHERN CALIFORNIA UTILITIES INC.,

By: Edward W. Brewer Jr

Its Solicitor

“EXHIBIT A”

ORDINANCE NO. 72

(New Series)

AN ORDINANCE GRANTING TO E. V. BAKER, AND ASSIGNS, THE RIGHT TO LAY DOWN AND MAINTAIN PIPES AND PIPE LINES, THROUGH, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC HIGHWAYS, IN AND ON THE TERRITORY HEREINAFTER DESCRIBED, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FOR THE PURPOSE OF CONDUCTING AND DISTRIBUTING WATER, AND SELLING THE SAME FOR DOMESTIC PURPOSES AND IRRIGATION.

The Board of Supervisors of the County of Los Angeles, State of California, do ordain as follows:

Section 1. That the privilege and franchise is hereby granted to E. V. Baker, and assigns, for the term of thirty years from and after the passage of this ordinance, to lay down, construct and maintain pipes, pipe lines and water conduits, through, in and under the public streets, alleys and highways of the County of Los Angeles, State of California, now or hereafter established, laid out or

dedicated, within the boundaries of the territory described as follows, to-wit:

Commencing at the section corner of Sections 15, 16, 21 and 22 of Township 2 S., R. 13 W., S. B. M.; thence east along section line to Alameda street and East City limits; thence north along city limits one-half mile; thence east 5600 feet, more or less, to west line of Los Angeles Fruitland Association; thence S. $1^{\circ} 10'$ E. 4180 feet, more or less, to the northwest corner of S. C. Miles Tract; thence S. $82^{\circ} 45'$ E. 1320 feet; thence south 1320 feet; thence N. $82^{\circ} 45'$ W. 1320 feet; thence south along east line Chipley Tract to the southeast corner of Lot 8 of said tract; thence N. $82^{\circ} 45'$ W. 3454 feet to the S. $\frac{1}{4}$ Sec. corner Sec. 22; thence west on section line to the Pacific-Electric R. R. right of way; thence northerly along said right of way to the north line of Section 21; thence east on section line to place of beginning.

For the purpose of carrying, conducting and distributing water for domestic purposes and for irrigation, for the term of thirty (30) years from and after the passage of this ordinance, together with the right to sell and dispose of the water and the use thereof, to the inhabitants of the County of Los Angeles, upon such terms as may be established from time to time by the authorities of said County, together with the right to construct and maintain all necessary connections and service pipe and house connections therewith, and such other apparatus and appliances as may be necessary for the purpose of efficiently operating and maintaining a domestic water system; provided that the said right, privilege and franchise is hereby granted and shall be at all times exercised and enjoyed in accordance with and subject to each and

every of the terms and conditions of this ordinance, and not otherwise.

Sec. 2. This franchise is granted upon the condition that said grantee and assigns shall, at all times, when, in laying down or repairing any pipe, or from any other cause, any excavation or embankment is made in any street, alley or highway of said County, immediately after said pipe is laid or repaired, or such other purposes effected, restore such street, alley or highway in all respects to its former condition, and leave the same in as good repair as before such embankment or excavation was made therein.

And to hold the said County harmless from any and all damages to any person or corporation by reason of exercising any of the rights herein granted or by reason of the constructing, maintaining or operating of said pipe line or lines directly or incidentally thereto, and to hold the County harmless thereof.

And said pipes, pipe lines and water conduits shall be located and maintained in conformity with the instruction of the Board of Supervisors, and shall be placed at least two (2) feet under ground and located and maintained in such a way as not to interfere with the use of the traveling public of such streets, alleys or public highways. And in the event that said grantee or assigns fails to comply with the instructions of said Board of Supervisors with respect to the location, maintenance and repairs of said pipes, pipe lines and conduits within ten (10) days after service of written notice upon said grantee or assigns requiring performance thereof, then said Board of Supervisors may immediately do the work on said pipes, pipe lines and conduits necessary to carry

out said instructions at the costs and expense of said grantee or assigns, which costs, by the acceptance of this franchise, said grantee or assigns agrees to pay upon demand.

Sec. 3. That said grantee or assigns shall file a written acceptance of the terms and conditions hereof, with the Clerk of the Board of Supervisors of said Los Angeles County, within ten (10) days after the passage of this ordinance, together with a bond for not less than five hundred (\$500) dollars, conditioned for the faithful performance of this franchise, which said bond is to be approved by the said Board of Supervisors, and a good and sufficient new bond shall be given whenever said Board of Supervisors shall require the same; and in default of the giving such bond or new bond within ten days after required, the said privilege and franchise on such failure shall be forfeited.

Sec. 4. This ordinance shall take effect and be in force from and after the First day of May, 1903; and prior to the expiration of fifteen (15) days from the passage hereof, shall be published for at least one week in the Los Angeles Daily Journal, a newspaper printed and published in the County of Los Angeles, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

O. W. LONGDEN

Chairman Board of Supervisors,
of Los Angeles County, State of California.

Attest:

C. G. KEYES

County Clerk, and

ex-officio Clerk of the Board of Supervisors.

BY J. O. Lowe, Deputy

“EXHIBIT B”

RESOLUTION OF INTENTION

No. 1093.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON PARK, CALIFORNIA, DECLARING ITS INTENTION TO ORDER CERTAIN WORK TO BE DONE AND IMPROVEMENT TO BE MADE AS HEREINAFTER SET FORTH AND DESCRIBING THE DISTRICT TO BE ASSESSED TO PAY THE COST AND EXPENSE OF SAID IMPROVEMENT.

The City Council of the City of Huntington Park does resolve as follows:

SECTION I.

That the public interest and convenience required and it is the intention of the City Council of the City of Huntington Park to order the following street work to be done or improvement to be made in said City, to-wit:

That Fifty-Second Street, Fifty-Third Street, Fifty-Fourth Street, Fifty-Fifth Street, Fifty-Sixth Street, Fifty-Seventh Street, and Fifty-Eighth Street, together with certain rights-of-way acquired across the right-of-way of the Los Angeles Railway Company and lying within the street lines of the before named streets prolonged across Pacific Boulevard, also the common intersections of the before named streets with Pacific Boulevard, all between Malabar Street and the east line of Huntington Park Extension No. 1 as per map recorded in Book 8, at page 181 of Maps, Records of Los Angeles

County, also Malabar Street and the first alley west of Pacific Boulevard between Slauson Avenue and Fifty-Second Street, also, the First Alley East of Pacific Boulevard between Slauson Avenue and a line 100 feet north of and parallel to the north line of Fifty-Second Street, and also, the First Alley North of Slauson Avenue between Malabar Street and the First Alley West of Pacific Boulevard and between the First Alley East of Pacific Boulevard and the east line of said Huntington Park Extension No. 1, be improved by the installation therein of certain cast iron water mains varying in diameter from four inches to twelve inches, together with gate-valves, fittings, fire hydrants, service connections and appurtenances, all within the limits hereinbefore given and to the extent and with the exceptions shown on the plans hereinafter referred to.

The grade to which the work shall be done and improvement made which is provided for in this Resolution of Intention shall be that shown on the plans and profiles hereinafter referred to, and reference is hereby made to said plans and profiles for a description of such grade.

That all of the foregoing work and improvement shall be done in accordance with plans, profiles, and cross-sections numbered 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487 and 488 on file in the office of the City Engineer of said City, and, except as otherwise provided for on said plans, in further accordance with Specifications No. 26 for the installation of cast iron water pipe and appurtenances thereto, said specifications being on file in the office of the City Clerk of said City.

Said plans, profiles, cross-sections and specifications heretofore approved by said City Council are incorporated

herein and made a part hereof and reference is hereby made thereto for a more complete and detailed description of said work as to location and dimensions thereof.

Attention is hereby directed to the Patent License Agreement between the City of Huntington Park and Rich Steel Products Company, relative to the use of the "Van Deventer California Type Hydrant," dated June 1, 1928, and on file in the office of the City Clerk.

SECTION II.

That said contemplated work or improvement is, in the opinion of the City Council of the City of Huntington Park, of more than local or ordinary public benefit; that said City Council hereby makes the cost and expense of said work or improvement chargeable upon a district, which district the City Council hereby declares to be the district benefited by said work or improvement and to be assessed to pay the cost and expense thereof, which district is bounded and described as follows:

All the land lying within the red boundary line as shown on a map or plat on file in the office of the City Engineer of said City, numbered 476 and titled, "Plat Showing Assessment District for the Improvement of Certain Portions of Fifty-Second Street, Fifty-Third Street, Fifty Fourth Street, Fifty-Fifth Street, Fifty-Sixth Street, Fifty-Seventh Street, Fifty-Eighth Street, Malabar Street, the first Alley West of Pacific Boulevard, the first alley east of Pacific Boulevard, the first alley north of Slauson Avenue and certain rights-of-way in the City of Huntington Park, California."

The above description is general only and reference is hereby made to said plat for a further full and complete description of said assessment district. The said

plat there on file shall govern for all details as to the extent of said Assessment District.

SECTION III.

That the City Council also determines and declares that serial bonds bearing interest at the rate of seven (7) per cent per annum shall be issued to represent each assessment of twenty-five (\$25.00) dollars, or more, remaining unpaid for thirty (30) days after the date of the warrant. Said serial bonds shall extend over a period ending nine (9) years from the second day of January next succeeding the fifteenth (15th) day of the next November following their date. Payments on the principal of unpaid assessments, and interest, shall be made by property owners to the City Treasurer, and the same shall be disbursed by him, all as provided in the Improvement Act of 1911, hereinafter referred to.

SECTION IV.

Notice is hereby given that on Monday the 2nd day of July, 1928, at 8 o'clock P. M., in the Council Chamber of the City Hall of the said City of Huntington Park, any and all persons having any objections to the proposed work or improvement, or to the extent of the district, or both, may appear before the said City Council and show cause why said proposed improvement should not be carried out in accordance with this Resolution.

SECTION V.

The Huntington Park Signal, a daily newspaper printed, published and circulated in the City of Huntington Park, is hereby designated as the newspaper in which this Resolution of Intention shall be published and for the publication of all other notices, resolutions, orders or other matter required to be published by the provisions

of the Improvement Act of 1911, hereinafter referred to, and the City Clerk of said City is hereby directed to cause this Resolution of Intention to be published by two (2) insertions in said newspaper, in the manner, and form required by law. The City Council does not deem it advisable that the Clerk mail copies of the notice of Improvement to owners, or reputed owners, and he is not required to mail the same.

SECTION VI.

The Street Superintendent of said City shall, after the adoption of said Resolution of Intention, cause to be conspicuously posted along the lines of said contemplated work or improvement, and along all the open streets within the hereinbefore described assessment district, notices of the passage of this Resolution of Intention, in the manner and form required by law.

SECTION VII.

All the proceedings for the aforesaid work or improvement shall be had and taken under and in accordance with the provisions of an Act of the Legislature of the State of California, designated as the "Improvement Act of 1911," approved April 7th, 1911, and Amendments thereto.

Passed and approved this 4th day of June, 1928.

JEROME V. SCOFIELD.

Mayor of the City of Huntington Park.

(Seal.)

Attest: W. P. Mahood,
City Clerk.

State of California,)
 County of Los Angeles, (ss.
 City of Huntington Park.)

I, W. P. Mahood, City Clerk of the City of Huntington Park, do hereby certify that the foregoing Resolution, being Resolution No. 1093 was adopted by the City Council of said City, signed by the Mayor, and attested by the City Clerk, all at a regular meeting thereof, held on the 4th day of June, 1928, and that the same was adopted by the following vote, to-wit:

Ayes: Councilmen, Benedict, Cox, Flick, Scofield.

Noes: Councilmen, None.

Absent: Councilmen, Wood.

W. P. MAHOOD,

City Clerk of the City of Huntington Park, California.

(Seal.)

June 11-12.

“EXHIBIT C”

RESOLUTION NO. 1099

A RESOLUTION OF THE CITY COUNCIL OF
 THE CITY OF HUNTINGTON PARK ORDER-
 ING THE IMPROVEMENT OF CERTAIN POR-
 TIONS OF MALABAR STREET AND OTHER
 STREETS AND ALLEYS WITHIN SAID CITY

The City Council of the City of Huntington Park does resolve as follows:

SECTION I

That the public interest and convenience require the work hereinafter described to be done, and therefore,

the City Council of the City of Huntington Park hereby orders the following work to be done and improvement to be made in said City, to-wit:

All that work and improvement on certain portions of Malabar street and other streets and alleys as more particularly described in Resolution of Intention no. 1093 as adopted by the City Council of said City on the 4th day of June, 1928, and on file in the office of the City Clerk of said City. For further particulars, reference is hereby made to said Resolution of Intention no. 1093, and the plans, profiles, cross-sections and drawings on file in the office of the City Engineer of said City, and to the specifications on file in the office of the City Clerk of said City, and all of said plans, profiles, cross-sections, drawings and specifications heretofore approved by said City Council and described in said Resolution of Intention are incorporated herein and made a part hereof, and reference is hereby made thereto for a more particular description of said work.

SECTION II.

The said City Council also determined and declared that serial bonds shall be issued to represent each assessment of Twenty-Five dollars (\$25.00) or more remaining unpaid for thirty (30) days after the date of the warrant. For a particular description of said bonds, reference is hereby made to said Resolution of Intention.

SECTION III

The said City Council also determined and declared that the contemplated work and improvement hereinbefore mentioned was, in the opinion of the said City Council, of more than local or ordinary public benefit and the expense of said work and improvement has been made

chargeable upon a district. For a particular description of said district, reference is hereby made to said Resolution of Intention.

SECTION IV

That sealed bids for said work shall be received up to 8 o'clock P. M. of the 16th day of July 1928.

The City Clerk is hereby directed to post a notice inviting sealed bids for said work with the specification therefor, conspicuously for five days, on or near the Council Chamber door of this City Council, and to publish a like notice referring to the specifications posted, or on file, twice in the Huntington Park Signal, a daily newspaper published and circulated in said City and hereby designated for that purpose.

Passed and approved by the City Council of the City of Huntington Park, this 2nd day of July, 1928.

Jerome V. Scofield

Mayor of the City of Huntington Park
California

SEAL

ATTEST:

W. P. Mahood

City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF HUNTINGTON PARK)

I hereby certify that the foregoing resolution being Resolution No. 1099 was duly passed by the City Council of the City of Huntington Park at a regular meeting held on the 2nd day of July, 1928, by the following vote, to-wit:

AYES: Councilmen, Cox, Scofield, Flick

NOES: Councilmen, None
ABSENT: Councilmen, Benedict, Wood
SEAL

W. P. Mahood
City Clerk of the City of
Huntington Park

“EXHIBIT D”

RESOLUTION OF AWARD
NO. 1109

WHEREAS, the City Council of the City of Huntington Park did, in open session on the 16th day of July, 1928, publicly open, examine and declare all sealed proposals or bids for doing the following work to be done and improvement to be made in said City, to-wit: All that certain work and improvement on portions of Malabar Street and other streets and alleys as set forth in Resolution of Intention No. 1093, passed and adopted by said City Council on the 4th day of June, 1928, which Resolution of Intention is on file in the office of the city clerk of said city and is hereby referred to for description of the said work and improvement, and also for a description of the assessment district liable to be assessed therefor, and for further particulars.

NOW, THEREFORE, BE IT RESOLVED by said city council that it reject, and it does hereby reject, all said proposals or bids except that next herein mentioned, and hereby awards the contract for doing said work and improvement to the lowest responsible bidder, to-wit: C. H. Merrill at the prices named in his bid.

The city clerk of said city is hereby directed to publish notice of this award twice in the Huntington Park Signal, a daily newspaper published and circulated in said City and hereby designated for that purpose by said city council.

Jerome V. Scofield

SEAL

Mayor of the City of Huntington Park
 ATTEST: W. P. Mahood
 Clerk

I hereby certify that the foregoing resolution was duly and regularly introduced and adopted by the city council of the City of Huntington Park at a regular meeting thereof held on Monday the 16th day of July, 1928, by the following vote, to-wit:

AYES:	Councilmen:	Cox, Flick, Scofield
NOES:	Councilmen:	None
ABSENT:	Councilmen:	Benedict
NOT VOTING:	Councilmen:	Mosher

W. P. Mahood

SEAL

City Clerk of the City of
 Huntington Park, California.

I.

That there is insufficiency of fact, and said Bill of Complaint does not state facts sufficient, to constitute a valid cause of action in equity against the said defendants or any of them.

WHEREFORE, said defendants move that said Bill of Complaint be dismissed and that they be given judgment for their costs.

Carson B. Hubbard

Thomas A. Berkebile

Solicitors for Moving Defendants.

[Endorsed]: Original No. O-10-M Equity In the United States District Court Southern District of California Southern Division Southern California Utilities Inc., a corporation, Complainant vs. City of Huntington Park et al., Defendants Motion and Notice of Hearing of Motion to Dismiss Bill of Complaint and Defendants' Points and Authorities. Service admitted of within Motion, Notice and Points and Authorities this 17th day of August 1928 Edward W. Brewer Jr Solicitor for Complainant. Filed Aug 17 1928 R. S. Zimmerman R. S. Zimmerman, Clerk Carson B. Hubbard Thomas A. Berkebile Attorney at Law Room 1015 Hollingsworth Building S. E. Cor. Hill and Sixth Los Angeles, Cal. Solicitors for Moving Defendants

to constitute a cause of action in equity as against the defendant C. H. Merrill.

IV.

Said motion will be based upon all the files and records in said cause, and this defendant attaches hereto points and authorities in support of said motion.

George W. Crouch

Attorney for said Defendant.

[Endorsed]: O-10 M United States of America District Court of the United States Southern District of California Southern Division in Equity. Southern California Utilities Inc. a corporation, Complainant vs. City of Huntington Park, et al, Defendants. Motion to Dismiss Bill of Complaint made on behalf of the Defendant C. H. Merrill. Received copy of the within motion to dismiss Bill of Complaint this 14 day of August, 1928. Attorney for Petitioner Edward W. Brewer Jr. Filed Aug 13-1928 R S. Zimmerman, clerk By L. J. Cordes Deputy Clerk, George W. Crouch 406 Rives-Strong Building Los Angeles, California. Tucker 4552.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

SOUTHERN CALIFORNIA)	
UTILITIES INC.,	)	No. O-10-M
a corporation,)	
Complainant,	)	EQUITY
vs.)	
CITY OF HUNTINGTON)	
PARK, a municipal corporation,)	
THE CITY COUNCIL OF)	
THE CITY OF HUNTING-)	
TON PARK; J. V. SCO-)	
FIELD, as Mayor of said City)	
of Huntington Park; J. V.)	
SCOFIELD, OTTO R. BENE-)	
DICT, ELMER E. COX,)	
JOHN A. MOSHER, and)	
JOHN C. FLICK, as members)	
of said City Council of Hunt-)	
ington Park; and C. H. MER-)	
RIL,)	
Defendants.)	

MEMORANDUM OF RULING ON MOTION OF
DEFENDANTS TO DISMISS SUIT.

EDWARD W. BREWER, Esq., of Los Angeles, Calif.
for Complainant.

THOMAS A. BERKEBILE, Esq., of Los Angeles,
Calif., for Defendant.

This is a suit in Equity by a public utility corporation of California to restrain the City of Huntington Park, a municipal corporation of the State of California, its officers and one Merrill, to whom it had awarded a public improvement contract, from laying pipes in and under its

public streets, to supply the inhabitants of said city with water for domestic and other uses.

The complainant, by unquestioned assignments has succeeded to the rights and privileges of one Baker, who on April 13, 1903, received from Los Angeles County, a public political body of California, a thirty year franchise to lay water pipes and conduct and operate a water distributing system under and through certain public streets and highways in said county. The territory mentioned in the complaint was, at the time the franchise was granted to Baker, not within any municipality or city, but later and on October 5, 1925, such territory became a part of the City of Huntington Park by unquestioned annexation proceedings. In 1906, certain predecessors of complainant, to whose rights complainant has succeeded, installed water pipes and conduits in the territory involved in this suit, and ever since then complainant or its assignors have furnished water to the inhabitants living within such territory. The defendant city has taken the necessary legal steps to establish a municipally owned water supply system within said territory in competition with complainant's company, and the city refuses to purchase or negotiate for the acquisition of complainant's equipment or system.

The foregoing statement in a general way summarizes the allegations of the bill of complaint. The defendants have interposed motions to dismiss the bill upon the general ground that it does not state facts sufficient to constitute a valid cause of action in Equity against them, and the question for decision is whether under the facts pleaded in the bill of complaint and the established law under the decisions of the United States Courts, this suit

is maintainable. It is conceded by the litigants that the Federal Court has jurisdiction to decide this action.

I am of the opinion that under the doctrine announced by the United States Supreme Court in *Knoxville Water Co. vs. Knoxville*, 200 U. S. 22, this suit as laid in the bill of complaint can not be maintained by complainant, and therefore defendant's motion to dismiss should be granted.

The County ordinance of April 13, 1903, which is the foundation of the contentions of complainant and defendants, respectively, in its pertinent provisions reads, "AN ORDINANCE GRANTING TO E. V. BAKER, AND ASSIGNS, THE RIGHT TO LAY DOWN AND MAINTAIN PIPES AND PIPE LINES, THROUGH, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC HIGHWAYS, IN AND ON THE TERRITORY HEREAFTER DESCRIBED, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FOR THE PURPOSE OF CONDUCTING AND DISTRIBUTING WATER, AND SELLING THE SAME FOR DOMESTIC PURPOSES AND IRRIGATION."

"The Board of Supervisors of the County of Los Angeles, State of California, do ordain as follows:

Section 1. That the privilege and franchise is hereby granted to E. V. Baker, and assigns, for the term of thirty years from and after the passage of this ordinance, to lay down, construct and maintain pipes, - - through - - the public streets - - now or hereafter established - - within the boundaries of the territory described as follows."

There is no language in this ordinance that expresses or connotes an exclusive privilege to the donee or his successors, and in accepting the privilege granted, the donee assumes the hazard of being later on confronted with the sovereign right of public governmental bodies to own, construct, and operate a water distributing system for the use of inhabitants within their territory. In *Clark vs. Los Angeles*, 160 Cal. 39, the Supreme Court of California in applying the principle of the *Knoxville Water* case, *supra*, said, "It is also a settled rule - - that where a grant of such franchise by the state or some municipality thereof is not, by its terms, made an exclusive franchise, and the city in which it is to be exercised is not, by the law or ordinance granting it, forbidden or prevented from competing, then a city may establish its own works for the same purpose and engage in the same public service within the city, although it may thereby injure, or practically destroy, the business of the holder of such franchise." The county ordinance in controversy here does not only not expressly confer upon its donee the exclusive right to furnish and supply water, but there is no language in the ordinance that forbids or prevents the county or its successors in governmental authority from competing, and its right to so compete can not be denied by implication. *Madera Water Works vs. Madera*, 228 U. S. 455, 185 Fed. 281.

The uniform rule established by the decisions of the United States Courts is that a private adventurer who constructs and develops a public utility plant within the governmental area of a public governmental body, without having first obtained an express contract or grant of the exclusive privilege to do so, takes the risk of what

may happen thereafter when such public body itself later concludes to enter the field of public utilities within its governmental territory; and such private adventurer who has not obtained an exclusive grant can not invoke the protection of the Federal constitution to safeguard him against loss by the erection or maintenance of a municipal plant for public utilities by the public governing body itself.

I think there is no merit in the suggestion that because the County of Los Angeles did not possess the legal power itself to establish a water works system for its inhabitants at the time of grant in 1903 to complainant's assignor, therefore the defendant municipal corporation does not possess such power at this time.

The scope of complainant's right, as already stated, is the extent of the express grant under the County ordinance of 1903, and there being nothing in said grant that conferred an exclusive right or privilege upon the donee or his successors, there was nothing in the action of the County of Los Angeles that could in any manner limit or prohibit the defendant municipal corporation from exercising its undoubted municipal function of establishing and maintaining a water distributing system within its territorial area for the inhabitants thereof. *United Railroad vs. San Francisco*, 249 U. S. 517. While it is true that the County of Los Angeles at the time of the franchise grant in 1903 was not strictly a municipal corporation, nevertheless, I believe that the decisions defining the rights of municipalities to compete with their donees of franchise privileges are applicable to such corporate and political bodies as counties, and my attention has not been called to any decision to the contrary.

The foregoing briefly and generally, but I believe sufficiently, states the reasons why this suit can not be maintained under the present bill of complaint.

Paul J. McCormick

Paul J. McCormick

United States District Judge.

Dated October 11, 1928

[Endorsed] : No. O-10-M United States District Court Southern District of California Southern Division Southern California Utilities Inc. a corporation vs. City of Huntington Park, et al. Filed Oct 11, 1928 R. S. Zimmerman Clerk, By L. J. Somers, Deputy

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

SOUTHERN CALIFORNIA UTIL-)	
ITIES INC., a corporation,)	
Complainant	)	Case No.
vs.	)	O-10-M
CITY OF HUNTINGTON PARK, a)	
municipal corporation; THE CITY	)	Equity
COUNCIL OF THE CITY OF)	
HUNTINGTON PARK; J. V. SCO-	)	DECREE
FIELD, as Mayor of said City of	)	DISMISSING
Huntington Park; J. V. SCOFIELD,	)	SUIT ON
OTTO R. BENEDICT, ELMER E.	)	DEFEND-
COX. JOHN A. MOSHER and	)	ANTS'
JOHN C. FLICK, as members of said	)	MOTIONS
City Council of Huntington Park; and	)	TO DISMISS
C. H. MERRILL,)	
Defendants.)	

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration

thereof, on the 11th day of October, 1928, Honorable Paul J. McCormick, District Judge, announced his decision, filed his written opinion herein and caused a minute entry to be made as follows:

“The motion of defendants herein to dismiss the bill of complaint herein is granted.”

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED

That the defendants' motions to dismiss be sustained and that this cause be and hereby is dismissed, and that defendants recover from plaintiff their costs herein expended assessed at \$7.00.

Dated Jan 2nd 1929

Paul J. McCormick
United States District Judge.

APPROVED AS TO FORM:

Edward W. Brewer Jr

Paul Overton

Solicitors for Plaintiff.

[Endorsed]: Original No. O-10-M (Equity) In the United States District Court Southern District of California Southern Division Southern California Utilities, Inc., Complainant vs. City of Huntington Park, et al., Defendants Decree Dismissing Suit on Defendants' Motions to Dismiss Filed Jan 2, 1929 R. S. Zimmerman Clerk By Louis J. Somers Deputy Clerk Carson B. Hubbard Thomas A. Berkebile Attorney at Law Room 1015 Hollingsworth Building S. E. Cor. Hill and Sixth Los Angeles, Cal. Attorneys for all defendants, except C. H. Merrill.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

SOUTHERN CALIFOR-	)	No. O-10-M IN EQUITY
NIA UTILITIES INC., a)	
corporation,	)	PETITION FOR AL-
Complainant,	)	LOWANCE OF APPEAL
vs.	)	TO THE CIRCUIT
CITY OF HUNTING-	)	COURT OF APPEALS
TON PARK, a municipal	)	OF THE UNITED
corporation, et al.,	)	STATES, IN AND FOR
Defendants.	)	THE NINTH <i>DISTRICT</i> .

To the Honorable Paul J. McCormick, United States District Judge, and one of the judges of the above-named court, presiding therein:

The above-named complainant, feeling aggrieved by the decree rendered and entered by the above-named court in the above-entitled action on January 2, 1929, hereby appeals from said decree to the Circuit Court of Appeals of the United States, in and for the Ninth *District*, for the reasons and upon the grounds set forth in the assignment of errors filed herewith, and said complainant prays that its appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record and proceedings upon which said decree was based, duly authenticated, be sent to the Circuit Court of Appeals of the United States, in and for the Ninth *District*, under the rules of court in such cases made and provided.

And your petitioner further prays that the proper order relating to the security to be required of it be made.

Dated this 8th day of January, 1929.

Paul Overton

Edward W. Brewer Jr.

Solicitors for complainant.

[Endorsed]: Original No. O-10-M In Equity In the District Court of the United States in and for the Southern District of California, Southern Division. Southern California Utilities Inc., a corporation, Complainant, vs. City of Huntington Park, a municipal corporation, et al., Defendants. Petition for Allowance of Appeal. Received copy of the within Petition for allowance of appeal this 8th day of January, 1929. Carson B Hubbard Thomas A Berkebile C. Attorneys for all defendants except C. H. Merrill George W. Crouch atty for Deft C H Merrill Filed Jan. 14, 1929. R. S. Zimmerman, Clerk, by L. J. Cordes, Deputy Clerk. Paul Overton 810 South Flower Street, Room 916 Los Angeles, Cal. FAber 5300 Attorneys for complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

SOUTHERN CALIFORNIA UTIL-	)	No. O-10-M
ITIES INC., a corporation,)	
Complainant,	)	IN EQUITY.
vs.)	
CITY OF HUNTINGTON PARK, a	)	ASSIGN-
municipal corporation, et al.,	)	MENT OF
Defendants.	)	ERRORS.

Comes now the complainant and files the following assignment of errors upon which it will rely for the prosecution of its appeal from the decree made and entered by this court on January 2, 1929, in the above-entitled cause.

The court erred:

I.

In making and rendering said decree ordering, adjudging and decreeing that the defendants' motions to dismiss be sustained and that said cause be dismissed.

II.

In making and rendering a decree in said cause denying to complainant a decree perpetually enjoining and restraining defendants and each of them from laying pipes, pipe lines or conduits for furnishing and supplying water to that portion of the City of Huntington Park described and referred to in the bill of complaint herein as the Fruitland District, and from furnishing and supplying water to the inhabitants of said district for domestic and other purposes.

III.

In holding and deciding that Ordinance No. 72 (new series) adopted by the Board of Supervisors of the County of Los Angeles, State of California, on the 13th day of April, 1903, entitled "An Ordinance granting to E. V. Baker and assigns the right to lay down and maintain pipes and pipe lines through, in and under the streets, alleys and public highways in and on the territory hereinafter described in the County of Los Angeles, State of California, for the purpose of conducting and distributing water and selling the same for domestic purposes and irrigation", which said ordinance is set out in full as "Exhibit A" to the bill of complaint herein, did not and does not confer upon complainant, as the successor in interest of the grantee named in said ordinance, the exclusive right, privilege and franchise to lay down, construct and maintain pipes, pipe lines and water conduits through, in,

along and under the public streets, alleys and highways of the County of Los Angeles, State of California, within the boundaries of the territory described in said ordinance, and to use the same for the purpose of conducting and distributing water and selling the same for domestic and other purposes for the period or term of thirty years from and after the effective date of such grant.

IV.

In holding and deciding that the City of Huntington Park, its officers, agents, servants and employees and the other defendants named in said bill of complaint should not be perpetually enjoined and restrained from laying any pipes, pipe lines or conduits for furnishing and supplying water to the inhabitants of said Fruitland District and for furnishing and supplying any water to the inhabitants thereof for domestic or other purposes.

V.

In holding and deciding that the ordinances of said City of Huntington Park referred to and set out in said bill of complaint purporting to authorize the laying of pipes, pipe lines or conduits by said the City of Huntington Park for furnishing and supplying water to the inhabitants of said Fruitland District and the furnishing and supplying of water by said city to the inhabitants of said district for domestic or other purposes, are, and each of them is, not violative of the provisions in section 10 of Article I of the Constitution of the United States forbidding any state to pass any law impairing the obligation of contracts.

VI.

In holding and deciding that by said ordinance and by said action of said City of Huntington Park complainant

is not deprived of its property without due process of law and is not denied the equal protection of the laws as guaranteed by the provisions of section 1 of the Fourteenth Amendment to the Constitution of the United States.

VII.

By holding and deciding that the laying down of pipes, pipe lines and conduits by said defendant the City of Huntington Park for furnishing and supplying water to the inhabitants of said Fruitland District and the furnishing and supplying of water by said city to the inhabitants of said district for domestic and other purposes is not violative of and prohibited by the provisions of the Fourteenth Amendment to the Constitution of the United States prohibiting any state from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or the provisions of said amendment forbidding any state from depriving any person of property without due process of law, or from denying to any person within its jurisdiction the equal protection of the laws.

WHEREFORE, appellant prays that said decree be reversed, and that said District Court of the United *State* in and for the Southern District of California, Southern Division, be ordered to enter a decree reversing said decree.

Dated January 8, 1929.

Paul Overton

Edward W. Brewer, Jr.

Solicitors for appellant.

[Endorsed]: Original No. O-10-M in Equity In the District Court of the United States in and for the South-

ern District of California, Southern Division. Southern California Utilities Inc., a corporation, Complainant, vs. City of Huntington Park, a municipal corporation, et al., Defendants. Assignment of Errors. Received copy of the within assignment of errors this 8 day of Jan, 1929. Carson B Hubbard Thomas A Berkebile Attorneys for all defendants except C H Merrill George W. Crouch Atty for deft. C H Merrill Filed Jan 14 1929 R. S. Zimmerman, Clerk By L. J. Cordes, deputy clerk Paul Overton 810 South Flower Street, Room 916 Los Angeles, Cal. FAber 5300 Attorneys for appellant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

SOUTHERN CALIFORNIA UTIL-	)	No. O-10-M
ITIES INC., a corporation,)	
Complainant,	)	IN EQUITY.
vs.)	
CITY OF HUNTINGTON PARK, a	)	ORDER
municipal corporation, et al.,	)	ALLOWING
Defendants.	)	APPEAL.

On motion of Paul Overton, Esq., solicitor and counsel for complainant,

IT IS HEREBY ORDERED that an appeal to the Circuit Court of Appeals of the United States, in and for the Ninth *District*, from the decree heretofore filed and entered herein be, and the same is, hereby allowed, and that a certified transcript of the records and all proceedings be forthwith transmitted to said Circuit Court of Appeals of the United States, in and for the Ninth *District*.

IT IS FURTHER ORDERED that the bond on appeal be fixed at the sum of \$250.00.

Dated January 14, 1929.

Paul J. McCormick
United States District Judge.

[Endorsed]: Original No. O-10-M In Equity In the District Court of the United States in and for the Southern District of California, Southern Division. Southern California Utilities Inc., a corporation, Complainant, vs. City of Huntington Park, a municipal corporation, et al., Defendants. Order Allowing Appeal. Received copy of the within order this 8 day of Jan, 1929. Carson B Hubbard Thomas A. Berkebile C. Attorneys for all defendants except C H Merrill George W. Crouch Atty for Deft. C H Merrill Filed Jan 14 1929 R. S. Zimmerman, Clerk By L. J. Cordes, Deputy Clerk Paul Overton 810 South Flower Street, Room 916 Los Angeles, Cal. FAber 5300 Attorneys for complainant.

Surety	Cash Capital \$2,500,000	Casualty
[Emblem]	Union Indemnity Company	Executive Offices: Union Indemnity Bldg. New Orleans, La.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

SOUTHERN CALIFORNIA UTILITIES INC., a corporation	)	No. O-10-M
Complainant	)	In Equity.
-vs-)	
CITY OF HUNTINGTON PARK, a Municipal Corporation, et al	)	UNDER-TAKING
Defendants	)	ON APPEAL

WHEREAS, on the 2nd day of January, 1929 judgment was rendered by the above court in the above entitled action in favor of the Defendants, and against the Complainant therein, and

WHEREAS, the Complainant desires to appeal from said Judgment and have taken an appeal to the UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, to reverse the judgment and decree of the District Court of the United States in and for the Southern District of California, Southern Division;

NOW, THEREFORE, in consideration of the premises and of the taking of said appeal, the undersigned UNION INDEMNITY COMPANY, a corporation duly organized under the laws of the State of Louisiana and having complied with the regulations of the United States of America relative to the execution and filing of bonds, stipulations and undertakings in the Courts of the United States of America, does undertake, promise and acknowledge itself bound in the sum of TWO HUNDRED FIFTY AND NO/100 (\$250.00) DOLLARS lawful money of the United States of America to the effect that said Complainant shall prosecute their appeal to effect, and answer all costs if they fail to make their plea, and shall pay all costs which may be assessed against them on the appeal or on a dismissal thereof.

IN WITNESS WHEREOF, the said UNION INDEMNITY COMPANY has hereunto caused its name and corporate seal to be affixed by its duly authorized officers at Los Angeles, California this 15th day of January, 1929.

UNION INDEMNITY COMPANY
By William M. Curran (Seal)
Its Attorney-in-Fact

The premium charged for this bond is 10.00 Dollars per annum.

I hereby approve the foregoing bond.

Dated the 17 day of Jan 1929

R. S. Zimmerman

Clerk

State of California County of Los Angeles—ss.

On this 15th day of January in the year one thousand nine hundred and 29 before me, H. M. VANDERSLICE a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared WILLIAM M. CURRAN known to me to be the duly authorized Attorney-in-fact of the UNION INDEMNITY COMPANY, and the same person whose name is subscribed to the within instrument as the Attorney-in-fact of said Company, and the said WILLIAM M. CURRAN duly acknowledged to me that he subscribed the name of the UNION INDEMNITY COMPANY thereto as Surety and his own name as Attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

(Seal)

H. M. Vanderslice

Notary Public in and for Los Angeles County, State of California

[Endorsed]: No. O-10-M. In Equity District Court of the United States, in and for the Southern District of California, Southern Division. Southern California Utilities Inc., a corporation Complainant, vs City of Hunting-

ton Park, a Municipal Corporation, et al, Defendants. Undertaking on Appeal. Filed Jan. 16, 1929 R. S. Zimmerman, R. S. Zimmerman, Clerk. William M. Curran Manager. Surety Department, Union Indemnity Company Pacific Natl Bank Bldg. Los Angeles. Phones Trinity 3034 Trinity 7411

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

SOUTHERN CALIFORNIA UTIL-)	
ITIES INC., a corporation,	)	No. O-10-M
Complainant,)	
vs.	)	IN EQUITY.
CITY OF HUNTINGTON PARK, a)	
municipal corporation, et al.,	)	PRAECIPE.
Defendants.)	

To the Clerk of said Court:

Sir :

Please issue in the above-entitled action in the form of a transcript of the proceedings the following papers, to wit:

The bill of complaint filed herein, the several motions to dismiss said cause, the written opinion of the Honorable Paul J. McCormick, United States District Judge, filed herein, the decree dismissing suit, all defendants' motions to dismiss, the petition for allowance of appeal to the Circuit Court of Appeals of the United States, in and for the Ninth *District*, the assignment of errors filed

on behalf of the complainant, the order allowing appeal, the bond on appeal, and the citation on appeal.

Paul Overton

Edward W. Brewer Jr.

Solicitors for complainant.

[Endorsed]: Original No. O-10-M In Equity In the District Court of the United States in and for the Southern District of California, Southern Division Southern California Utilities Inc., a corporation, Complainant, vs. City of Huntington Park, a municipal corporation, et al., Defendants. Praeipce. Received copy of the within Praeipce this 8th day of January, 1929. Carson B. Hubbard, Thomas A Berkebile C Attorneys for all defendants except C. H. Merrill Crouch & Crouch by George W. Crouch atty for deft. C H. Merrill Filed Jan. 14, 1929. R. S. Zimmerman, Clerk, by L. J. Cordes, Deputy Clerk. Paul Overton 810 South Flower Street, Room 916 Los Angeles, Cal. FAber 5300 Attorneys for complainant.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF CALI-
FORNIA, SOUTHERN DIVISION.

SOUTHERN CALIFOR-	)	No. O-10-M IN EQUITY
NIA UTILITIES INC., a)	
corporation,)	
Complainant,	)	CLERK'S
vs.)	
CITY OF HUNTING-	)	CERTIFICATE.
TON PARK, a municipal)	
corporation, et al.,)	
Defendants.)	

I, R. S. ZIMMERMAN, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 49 pages, numbered from 1 to 49 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, bill of complaint, motions to dismiss, memorandum ruling, decree dismissing suit, petition for appeal, assignment of errors, order allowing appeal, undertaking on appeal and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this.....day of February, in the year of Our Lord One Thousand Nine Hundred and Twenty-nine, and of our Independence the One Hundred and Fifty-third.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in
and for the Southern District of
California.

By

Deputy.

